

# Discipline OK, even when worker could use FMLA

Some supervisors hesitate to discipline employees who have asked for FMLA leave or seem likely to need it soon.

Reassure them that they can and should discipline those who break company rules or perform poorly, even if they are ill or may need FMLA leave.

The key is to focus on behavior.

**Recent case:** Subi drove a school bus. He worked a split shift, picking up and delivering children early in the morning and bringing them home in the afternoon. In between, he was supposed to take his bus back to a central parking lot. He was free to spend the time between shifts as he wished.

One day, Subi awoke with a headache and took over-the-counter medications before the morning shift, which he worked. After gassing up the bus, he parked it at an elementary school and called his son to take him to his doctor's office. He did not call his supervisor to tell him he was sick.

While Subi was at the doctor's office, a supervisor tried unsuccessfully to reach him.

The boss drove to Subi's home and then to the school, where he found the bus.

He drove the bus to the regular parking lot. When Subi went to get the bus, it was missing. He called the supervisor, who immediately fired Subi parking at a different location without authorization.

Subi sued, alleging that he had been seriously ill and eligible for FMLA leave when he was fired.

But the court tossed out his case. It reasoned that the bus company had an unrelated and legitimate reason for terminating Subi: parking the bus in the wrong location. (*Mehmeti v. Jofaz Transportation*, No. 12-CIV-5580, ED NY, 2015)